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investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies. If the investigator's certification was valid when made, the suspension of availability pay shall be effected prospectively.

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section is a reduction in pay for the purpose of applying the adverse action procedures of 5 U.S.C. 7512 and part 752 of this chapter, except for special agents in the Foreign Service. For special agents in the Foreign Service, an involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section will be administered under procedures established by regulations of the Department of State.

(f) The head of an agency (or authorized designee) may prescribe any additional regulations necessary to administer the certification requirement, including procedures for retroactive correction in cases in which a certification is issued belatedly or lapses due to administrative error.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4520, Jan. 29, 1999]

§ 550.185 Payment of availability pay.

(a) Availability pay is paid only for periods of time during which a criminal investigator receives basic pay. Availability pay is an amount equal to the lesser of—(1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as “salary” for special agents in the Diplomatic Security Service; or

(2) The maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers in 5 U.S.C. 5547(c).

(b) Except as provided in paragraph (c) of this section, a criminal investigator who is eligible for availability pay shall continue to receive such pay during any period such investigator is attending agency-sanctioned training, on agency-ordered travel status, on agency-approved leave with pay, or on

excused absence with pay for relocation purposes.

(c) Agencies may, at their discretion, provide availability pay to criminal investigators during training that is considered initial, basic training usually provided in the first year of service.

(d) Agencies may, at their discretion, provide for the continuation of availability pay when a criminal investigator is on excused absence with pay, except where payment is mandatory under paragraph (b) of this section.

(e) The amount of availability pay payable to a criminal investigator for a pay period is not affected by the occurrence of a paid holiday during that period.

[59 FR 66151, Dec. 23, 1994, as amended at 60 FR 67287, Dec. 29, 1995; 64 FR 4521, Jan. 29, 1999]

§ 550.186 Relationship to other payments.

(a) Standby duty pay under § 550.141 and administratively uncontrollable overtime pay under § 550.151 may not be paid to a criminal investigator receiving availability pay. Receipt of availability pay does not affect an investigator's entitlement to other types of premium pay (including overtime pay under § 550.111) based on hours other than unscheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

(b) Availability pay is treated as part of basic pay or basic salary only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(6) 5 U.S.C. 8704(c), pertaining to life insurance;

(7) Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended (Pub. L. 96-465), pertaining to Foreign Service retirement benefits; and

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(8) For any other purposes explicitly provided for by law or as the Office of Personnel Management or the Secretary of State (for matters exclusively within the jurisdiction of the Secretary) may prescribe by regulation.

(c) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

[59 FR 66151, Dec. 23, 1994, as amended at 64 FR 4521, Jan. 29, 1999; 64 FR 36771, July 8, 1999]

§ 550.187 Transitional provisions.

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in § 550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b)(1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§ 550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30, 1995, for investigators who were receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994.

(2) A criminal investigator who is employed in an Inspector General office and was receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately

prior to September 30, 1994, shall continue to receive at least that rate or a higher rate, if increased by the employing agency, until the availability pay provision is implemented for the position (no later than as provided in paragraph (b)(1)(ii) of this section).

(3) Implementation of availability pay for criminal investigators under paragraph (b)(1) of this section shall be in accordance with the requirements and conditions set forth in §§ 550.181 through 550.186. For qualified investigators, an initial certification shall be made, consistent with paragraph (a) of this section.

[59 FR 66151, Dec. 23, 1994]

Subpart B—Advances in Pay

AUTHORITY: 5 U.S.C. 5524a, 5545a(h)(2)(B); E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316.

SOURCE: 56 FR 12837, Mar. 28, 1991, unless otherwise noted.

§ 550.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5524a which provides that the head of each agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

§ 550.202 Definitions.

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

Employee means an individual employed in or under an agency who is appointed to a position with a scheduled tour of duty.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Newly appointed means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following termination of employment in an Internship Program (as described in 5 CFR part